

Introduced by Senator Hancock

February 20, 2014

An act to amend Sections 646.91, 13700, and 18250 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1154, as introduced, Hancock. Peace officers: San Francisco Bay Area rapid Transit District Police Department.

(1) Under existing law, a member of the San Francisco Bay Area Rapid Transit District Police Department is a peace officer if the primary duty of the peace officer is the enforcement of the law in or about the properties of the district.

Existing law requires every law enforcement agency in the state to develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls that encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. Existing law defines "officer" for these purposes.

This bill would include a member of the San Francisco Bay Area Rapid Transit District Police Department in the definition of "officer" for the purposes of these provisions. By increasing the duties of a local agency, this bill would impose a state-mandated local program.

(2) Under existing law, a person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, is guilty of the crime of stalking. Existing law allows a judicial officer to issue an ex parte emergency protective order if a peace officer, as defined, asserts reasonable grounds to believe that a person is in immediate and present danger of stalking, as provided.

This bill would include a member of the San Francisco Bay Area Rapid Transit District Police Department in the definition of peace officer for the purposes of these provisions.

(3) Existing law requires certain specified peace officers to take temporary custody of any firearm or other deadly weapon discovered at the scene of a domestic violence incident involving a threat to human life or physical assault or if the peace officer is serving a protective order.

This bill would include a member of the San Francisco Bay Area Rapid Transit District Police Department among the peace officers to whom these provisions apply. By increasing the duties of local peace officers, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 646.91 of the Penal Code is amended to
2 read:
3 646.91. (a) Notwithstanding any other law, a judicial officer
4 may issue an ex parte emergency protective order if a peace officer,
5 as defined in Section 830.1, 830.2, ~~or~~ 830.32, *or subdivision (a)*
6 *of Section 830.33*, asserts reasonable grounds to believe that a
7 person is in immediate and present danger of stalking based upon
8 the person's allegation that he or she has been willfully,
9 maliciously, and repeatedly followed or harassed by another person
10 who has made a credible threat with the intent of placing the person
11 who is the target of the threat in reasonable fear for his or her
12 safety, or the safety of his or her immediate family, within the
13 meaning of Section 646.9.
14 (b) A peace officer who requests an emergency protective order
15 shall reduce the order to writing and sign it.

1 (c) An emergency protective order shall include all of the
2 following:

3 (1) A statement of the grounds asserted for the order.

4 (2) The date and time the order expires.

5 (3) The address of the superior court for the district or county
6 in which the protected party resides.

7 (4) The following statements, which shall be printed in English
8 and Spanish:

9 (A) “To the protected person: This order will last until the date
10 and time noted above. If you wish to seek continuing protection,
11 you will have to apply for an order from the court at the address
12 noted above. You may seek the advice of an attorney as to any
13 matter connected with your application for any future court orders.
14 The attorney should be consulted promptly so that the attorney
15 may assist you in making your application.”

16 (B) “To the restrained person: This order will last until the date
17 and time noted above. The protected party may, however, obtain
18 a more permanent restraining order from the court. You may seek
19 the advice of an attorney as to any matter connected with the
20 application. The attorney should be consulted promptly so that the
21 attorney may assist you in responding to the application. You may
22 not own, possess, purchase, or receive, or attempt to purchase or
23 receive, a firearm while this order is in effect.”

24 (d) An emergency protective order may be issued under this
25 section only if the judicial officer finds both of the following:

26 (1) That reasonable grounds have been asserted to believe that
27 an immediate and present danger of stalking, as defined in Section
28 646.9, exists.

29 (2) That an emergency protective order is necessary to prevent
30 the occurrence or reoccurrence of the stalking activity.

31 (e) An emergency protective order may include either of the
32 following specific orders as appropriate:

33 (1) A harassment protective order as described in Section 527.6
34 of the Code of Civil Procedure.

35 (2) A workplace violence protective order as described in
36 Section 527.8 of the Code of Civil Procedure.

37 (f) An emergency protective order shall be issued without
38 prejudice to any person.

39 (g) An emergency protective order expires at the earlier of the
40 following times:

1 (1) The close of judicial business on the fifth court day following
2 the day of its issuance.

3 (2) The seventh calendar day following the day of its issuance.

4 (h) A peace officer who requests an emergency protective order
5 shall do all of the following:

6 (1) Serve the order on the restrained person, if the restrained
7 person can reasonably be located.

8 (2) Give a copy of the order to the protected person, or, if the
9 protected person is a minor child, to a parent or guardian of the
10 protected child if the parent or guardian can reasonably be located,
11 or to a person having temporary custody of the child.

12 (3) File a copy of the order with the court as soon as practicable
13 after issuance.

14 (4) Have the order entered into the computer database system
15 for protective and restraining orders maintained by the Department
16 of Justice.

17 (i) A peace officer shall use every reasonable means to enforce
18 an emergency protective order.

19 (j) A peace officer who acts in good faith to enforce an
20 emergency protective order is not civilly or criminally liable.

21 (k) A peace officer described in subdivision (a) or (b) of Section
22 830.32 who requests an emergency protective order pursuant to
23 this section shall also notify the sheriff or police chief of the city
24 in whose jurisdiction the peace officer's college or school is located
25 after issuance of the order.

26 (l) "Judicial officer," as used in this section, means a judge,
27 commissioner, or referee.

28 (m) A person subject to an emergency protective order under
29 this section shall not own, possess, purchase, or receive a firearm
30 while the order is in effect.

31 (n) Nothing in this section shall be construed to permit a court
32 to issue an emergency protective order prohibiting speech or other
33 activities that are constitutionally protected or protected by the
34 laws of this state or by the United States or activities occurring
35 during a labor dispute, as defined by Section 527.3 of the Code of
36 Civil Procedure, including, but not limited to, picketing and hand
37 billing.

38 (o) The Judicial Council shall develop forms, instructions, and
39 rules for the scheduling of hearings and other procedures
40 established pursuant to this section.

1 (p) Any intentional disobedience of any emergency protective
2 order granted under this section is punishable pursuant to Section
3 166. Nothing in this subdivision shall be construed to prevent
4 punishment under Section 646.9, in lieu of punishment under this
5 section, if a violation of Section 646.9 is also pled and proven.

6 SEC. 2. Section 13700 of the Penal Code is amended to read:

7 13700. As used in this title:

8 (a) “Abuse” means intentionally or recklessly causing or
9 attempting to cause bodily injury, or placing another person in
10 reasonable apprehension of imminent serious bodily injury to
11 himself or herself, or another.

12 (b) “Domestic violence” means abuse committed against an
13 adult or a minor who is a spouse, former spouse, cohabitant, former
14 cohabitant, or person with whom the suspect has had a child or is
15 having or has had a dating or engagement relationship. For
16 purposes of this subdivision, “cohabitant” means two unrelated
17 adult persons living together for a substantial period of time,
18 resulting in some permanency of relationship. Factors that may
19 determine whether persons are cohabiting include, but are not
20 limited to, (1) sexual relations between the parties while sharing
21 the same living quarters, (2) sharing of income or expenses, (3)
22 joint use or ownership of property, (4) whether the parties hold
23 themselves out as husband and wife, (5) the continuity of the
24 relationship, and (6) the length of the relationship.

25 (c) “Officer” means any officer or employee of a local police
26 department or sheriff’s office, and any peace officer of the
27 Department of the California Highway Patrol, the Department of
28 Parks and Recreation, the University of California Police
29 Department, or the California State University and College Police
30 Departments, as defined in Section 830.2, a peace officer of the
31 Department of General Services of the City of Los Angeles, as
32 defined in subdivision (c) of Section 830.31, a housing authority
33 patrol officer, as defined in subdivision (d) of Section 830.31, ~~or~~
34 a peace officer as defined in subdivisions (a) and (b) of Section
35 830.32, *or a peace officer as defined in subdivision (a) of Section*
36 *830.33.*

37 (d) “Victim” means a person who is a victim of domestic
38 violence.

39 SEC. 3. Section 18250 of the Penal Code is amended to read:

1 18250. If any of the following persons is at the scene of a
2 domestic violence incident involving a threat to human life or a
3 physical assault, or is serving a protective order as defined in
4 Section 6218 of the Family Code, that person shall take temporary
5 custody of any firearm or other deadly weapon in plain sight or
6 discovered pursuant to a consensual or other lawful search as
7 necessary for the protection of the peace officer or other persons
8 present:

9 (a) A sheriff, undersheriff, deputy sheriff, marshal, deputy
10 marshal, or police officer of a city, as defined in subdivision (a)
11 of Section 830.1.

12 (b) A peace officer of the Department of the California Highway
13 Patrol, as defined in subdivision (a) of Section 830.2.

14 (c) A member of the University of California Police Department,
15 as defined in subdivision (b) of Section 830.2.

16 (d) An officer listed in Section 830.6, while acting in the course
17 and scope of the officer's employment as a peace officer.

18 (e) A member of a California State University Police
19 Department, as defined in subdivision (c) of Section 830.2.

20 (f) A peace officer of the Department of Parks and Recreation,
21 as defined in subdivision (f) of Section 830.2.

22 (g) A peace officer, as defined in subdivision (d) of Section
23 830.31.

24 (h) A peace officer, as defined in subdivisions (a) and (b) of
25 Section 830.32.

26 (i) *A member of the San Francisco Bay Area Rapid Transit*
27 *District Police Department, as defined in subdivision (a) of Section*
28 *830.33.*

29 (i)

30 (j) A peace officer, as defined in Section 830.5.

31 SEC. 4. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.